

# Consent Decree

## I. Introduction

1. This Consent Decree is entered into by the Enforcement Bureau of the Federal Communications Commission ("Bureau"), OpTel, Inc. and OpTel (Texas) Telecom, Inc.

## II. Background

2. OpTel (Texas) Telecom, Inc. is a wholly-owned subsidiary of OpTel, Inc. ("OpTel"), a Texas-based telecommunications company. OpTel specializes in providing cable television and high speed internet access for multi-family housing communities. OpTel currently provides cable television in a number of metropolitan areas including Atlanta, Chicago, Denver, Dallas-Fort Worth, Houston, Indianapolis, Miami, Fort Lauderdale, Orlando, Phoenix, San Diego, San Francisco, Tampa and Greater Washington, D.C. OpTel currently provides Internet access services in Houston, Dallas-Fort Worth, and Denver. In addition, OpTel (Texas) Telecom, Inc. was a regulated provider of local and long-distance telephone services, but finally discontinued such services during August of 2001. In addition, OpTel and certain of its affiliates and subsidiaries, including OpTel (Texas) Telecom, Inc., filed voluntary petitions for protection pursuant to Chapter 11 of the United States Bankruptcy Code. On December 4, 2001, the court presiding over their bankruptcy cases confirmed a plan of reorganization. OpTel, Inc. and certain of its affiliates and subsidiaries, including OpTel (Texas) Telecom, Inc., have effected, or are in the process of effecting, their reorganization pursuant to such confirmed plan.

3. Section 52.15(f) of the Commission's rules requires U.S. carriers receiving numbering resources from the North American Numbering Plan Administrator ("NANPA"), a Pooling Administrator or another telecommunications carrier, to report semiannually on their actual and forecast number usage. These data are to be reported on FCC Form 502, the North American Numbering Plan Numbering Resource Utilization/Forecast ("NRUF") Report. Carriers and their affiliates and subsidiaries are assigned Operating Company Numbers ("OCNs") for which NRUF reports must be filed.

4. Pursuant to section 52.15(f)(6), NRUF reports are due on or before February 1 and on or before August 1 of each year.<sup>1</sup> The deadline for filing reports due on August 1, 2000 was extended to September 15, 2000.<sup>2</sup> The Bureau received information indicating that OpTel (Texas) Telecom, Inc. failed to file the NRUF reports due on September 15, 2000 for OCN numbers 4743, 4744, 4797, and 7758.

5. The Bureau initiated an investigation of OpTel (Texas) Telecom, Inc.'s apparent failure to comply with the mandatory reporting requirements of section 52.15(f). As a result of the investigation, the Bureau issued a *Notice of Apparent Liability for Forfeiture* ("NAL"). In the NAL, the Bureau made a preliminary finding that OpTel (Texas) Telecom, Inc. apparently had willfully violated section 52.15(f) and proposed a forfeiture in the amount of \$9,000 for this apparent violation.<sup>3</sup>

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<sup>1</sup> 47 C.F.R. § 52.15(f)(6).

<sup>2</sup> The extension for the August 1, 2000 report was implemented by the Commission in *Number Resource Optimization*, CC Docket No. 99-200, 15 FCC Rcd 17005 (2000).

<sup>3</sup> *OpTel Texas Telecom, Inc.*, 16 FCC Rcd 8655 (EB 2001).

### **III. Definitions**

6. For the purposes of this Consent Decree, the following definitions shall apply:
  - (a) "Commission" means the Federal Communications Commission.
  - (b) "Bureau" means the Commission's Enforcement Bureau.
  - (c) "OpTel" means OpTel, Inc. and its wholly owned subsidiary, OpTel (Texas) Telecom, Inc.
  - (d) "Order" means the order of the Enforcement Bureau adopting this Consent Decree.
  - (e) "Final Order" means the Order that is no longer subject to administrative or judicial reconsideration, review, appeal, or stay.
  - (f) "Act" means the Communications Act of 1934, as amended, Title 47 of the United States Code.
  - (g) "NAL" means Notice of Apparent Liability for Forfeiture.

### **IV. Agreement**

7. OpTel agrees that the Bureau has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

8. The Bureau and OpTel agree that this Consent Decree does not constitute an adjudication on the merits or any finding on the facts or law regarding any violations of the Act or the Commission's rules committed by OpTel.

9. If in the future OpTel provides local or long-distance telephone service or is otherwise required by the Commission's rules to report on its actual or forecast number usage, OpTel agrees to implement a comprehensive internal program, a summary of which is attached hereto, to ensure OpTel's future compliance with the Act and the Commission's rules.

10. OpTel agrees that it shall make a voluntary contribution to the United States Treasury in the amount of \$7,200 within 10 calendar days after the Bureau releases the Order adopting this Consent Decree.

11. In express reliance upon the representations contained herein, the Bureau agrees to terminate its investigation into the matters discussed in paragraphs 3-5, above, and to cancel the NAL issued to OpTel in connection with that investigation.

12. The Bureau agrees not to institute on its own motion any new proceeding, formal or informal, of any kind against OpTel for apparent violations of section 52.15(f) of the Commission's rules arising from the matters discussed in paragraphs 3-5, above, for behavior during the time period preceding the date of this consent decree.

13. In the event that OpTel is found by the Commission or its delegated authority to have engaged in a violation of section 52.15(f) subsequent to the release of the Order adopting this Consent

Decree, OpTel agrees that the conduct described in paragraphs 3-5, above, may be considered by the Commission or its delegated authority in determining an appropriate sanction.

14. OpTel waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Order is limited to adopting the Consent Decree without change, addition, or modification.

15. OpTel and the Bureau agree that the effectiveness of this Consent Decree is expressly contingent upon issuance of the Order, provided the Order adopts the Consent Decree without change, addition, or modification.

16. OpTel and the Bureau agree that in the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

17. OpTel and the Bureau agree that if OpTel, the Commission, or the United States on behalf of the Commission, brings a judicial action to enforce the terms of the Order adopting this Consent Decree, neither OpTel nor the Commission shall contest the validity of the Consent Decree or Order, and OpTel and the Commission shall waive any statutory right to a trial *de novo* with respect to any matter upon which the Order is based (provided in each case that the Order is limited to adopting the Consent Decree without change, addition, or modification), and shall consent to a judgment incorporating the terms of this Consent Decree.

18. OpTel agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, Title 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters discussed in paragraphs 3-5, above.

19. OpTel agrees that any violation of the Order adopting this Consent Decree shall constitute a separate violation and subject OpTel to appropriate administrative sanctions.

20. OpTel and the Bureau agree to be bound by the terms and conditions stated herein.

21. OpTel and the Bureau agree that this Consent Decree may be signed in counterparts.

**ENFORCEMENT BUREAU  
FEDERAL COMMUNICATIONS COMMISSION**

By: \_\_\_\_\_  
David H. Solomon  
Chief, Enforcement Bureau

\_\_\_\_\_  
Date

**OPTEL, INC.  
OPTEL (TEXAS) TELECOM, INC.**

By: \_\_\_\_\_  
David Curtin  
Vice President

\_\_\_\_\_  
Date

**SUMMARY OF COMPLIANCE PROGRAM  
OF  
OPTTEL (TEXAS) TELECOM, INC.**

OpTel (Texas) Telecom, Inc. ("OpTel") will establish the OpTel Number Utilization and Forecast Data Reporting Compliance Program (the "Program") to ensure compliance with 47 C.F.R. § 52.15. The program will consist of the following:

1. Oversight by Compliance Coordinator

- a. The Program will be administered within OpTel's Engineering Department by a designated Compliance Coordinator supported by the Legal Department.
- b. The Compliance Coordinator, with the support of the Legal Department, will be available to provide advice and assistance in matters related to compliance with § 52.15.

2. Creation of FCC Reporting and Licensing Record

- a. OpTel will create a record of all of its § 52.15 reporting obligations.
- b. The Compliance Coordinator will establish and maintain the record and shall regularly review this record to ensure the accuracy of said information and timely data reporting.

3. Communication of Compliance Program

- a. Awareness of § 52.15 requirements will be fostered by implementing a program for communicating to company individuals and departments that may be involved in the reporting of number utilization and forecast data.
- b. The Compliance Coordinator will ensure that all new employees in appropriate areas are fully knowledgeable of the Program and all § 52.15 requirement.
- c. The Compliance Coordinator will ensure that changes in FCC policy or the law are distributed and explained to appropriate personnel.